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Fifth Circuit Affirms Dismissal of ADEA Claim Lacking Evidence of Age-Bias

Law and the Workplace Blog on **April 4, 2022**

On March 11, 2022, the United States Court of Appeals for the Fifth Circuit affirmed summary judgment, dismissing a Texas city employee's claim that he had been unlawfully terminated from his job because of his age. The Fifth Circuit held that age discrimination comments must contain age-specific references, and a factfinder cannot infer age discrimination without clear evidence of age bias.

Brief Background

In *Harris v. City of Schertz*, No. 20-50795 (5th Cir. March 11, 2022), Michael Harris ("Harris") brought suit against his former employer the City of Schertz, Texas ("the City" or "City"). Harris was employed as City Marshall who supervised the City's Animal Services Department as part of his duties for approximately three years. In December 2016, a manager complained to Harris about the behavior of another employee, and Harris relayed the information to senior authorities. The City opened an investigation and discovered Harris had been present and even participatory when sexually and racially inappropriate language was used in the workplace. The City demoted Harris for his alleged involvement in fostering an inappropriate work environment. Two months later, the City terminated Harris for allegedly placing a concealed camera at the City's Animal Services Department.

Harris filed suit in the Western District of Texas alleging unlawful discrimination on account of his sex, in violation of Title VII, and age, in violation of the Age Discrimination in Employment Act ("ADEA"). The district court found Harris established he was discharged because of his age, relying on his superior's testimony that Harris "had not been adequately prepared or mentored" or "taught to be a leader", and that Harris "struggled to engage and to learn more" despite the City needing a manager with a higher level of sophistication and leadership than Harris. The district court rejected the City's offered reason for Harris' termination – that they intended to demote Harris for the work environment at the City's Animal Services Department and the discovery of the hidden camera – because it was unclear if Harris had actually ordered the camera to be hidden. Notwithstanding, the district court ultimately dismissed Harris' sex and age discrimination claims by granting the City's summary judgment because he (1) failed to provide evidence that a similarly situated employee outside of his protected class was treated more favorably to establish sex discrimination, and (2) failed to prove "but-for" causation between his age and the termination to establish age discrimination. Harris only appealed the district court's dismissal of his age-based discrimination claim.

Fifth Circuit's Decision

The Fifth Circuit affirmed summary judgment in favor of the City, including dismissal of Harris' age discrimination claim. Concluding the testimony about Harris' performance did not contain sufficient age-specific bias for a factfinder to infer Harris was terminated because of his age, the Fifth Circuit agreed that Harris' termination did not amount to age discrimination. Harris argued the testimony that he was largely unqualified for the responsibilities of his position would allow a factfinder to infer that Harris was terminated because he was "old and slow." The Fifth Circuit disagreed, stating "[s]uch an inference would be pure speculation." Citing their own precedent, the Fifth Circuit concluded that when a decision-maker's comments are "sufficiently suggestive of age bias", the comments contain more age-specific references than the testimony about Harris' leadership deficiencies, citing examples like referring to a plaintiff as an "old fart" or "old goat", or describing his appearance as "old man clothes." Thus, the Fifth Circuit held that a reasonable factfinder would not be justified to infer that Harris was terminated because of his age.

Key Takeaways

The Fifth Circuit confirmed that a factfinder must have evidence of age-specific bias, not mere inferences, in order to permit an age discrimination claim to survive dismissal. Thus, an employer's decision to terminate an employee for poor performance will not be usurped by an age discrimination claim if there is an absence of age-specific bias by the decision-maker.

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